IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 23049 of 2002

Between:

1. The Government of Andhra Pradesh,

represented by Chief Commissioner of

Land Administration, Hyderabad.

2. The District Collector, Chittoor District, Chittoor.

3. The Enquiry Officer-cum-Revenue Divisional Officer,

Punganur, chittoor District.

..... PETITIONER

AND

1. V.Padmanabham, Deputy Tahsildar (under dismissal),

O/o Mandal Revenue Officer's Office, Punganur,

Chittoor District, residing at Kottakindapalle, Punganur

Mandal, Chittoor district.

2. G.Subbaiah, presently working as Revenue Divisional

Officer, Cuddapah.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, order or direction more particularly one in he nature of writ of Certiorari calling for the records relating to the Judgment passed in O.A.No.1963/97 dated 2.1.2002 of the A.P. Administrative Tribunal, Hyderabad and quash the same as being erroneous and illegal.

Counsel for the Petitioner: GP FOR SERVICES II

Counsel for the Respondent No.1: MR R.VIJAYNANDAN REDDY

Counsel for the respondent No.2: None appeared

The Court made the following :

ORDER: (Per the Hon'ble Sri Justice G.Bikshapathy)

The writ petition is filed by the Government assailing the order dated 02.01.2002 passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.1963 of 1997.

2. The un-official respondent No.1 was working as Deputy Tahsildar, Civil Supplies at Punganur. He worked in such capacity for the period from 11.5.1992 to 29.01.1993. However, it was noticed by the authorities that there were some irregularities under which he supplied essential commodities meant for public distribution to the private party to an extent of more than Rs.6,20,000/-. Therefore, he was placed under suspension on 29.01.1993. Thereafter, an Enquiry Officer was appointed and the said Enquiry Officer framed the charges on 24.2.1994 and enquiry was conducted thereafter, and a show cause notice was issued to the un-official respondent No.1 as to why he should not be dismissed from service. He submitted his explanation. Ultimately, the order of dismissal was passed on 21.10.1994. Against the said order, he filed an appeal and the appeal was also dismissed. Assailing the order of dismissal, he filed O.A.No.1963 of 1997 before the A.P. Administrative Tribunal. The Tribunal, without going into merits of the case,

observed that the Enquiry Officer was not competent to frame the charges and therefore, the entire enquiry is vitiated. Accordingly, the A.P. Administrative Tribunal set aside the order of dismissal, leaving it open to the Department to initiate disciplinary proceedings in accordance with law. Assailing the said order, the present writ petition has been filed by the Government.

3. The learned Government Pleader submits that the finding of the Tribunal that the Enquiry Officer is not competent to frame the charges is only misconceived, more especially when the Enquiry Officer has effectively participated in the enquiry and did not take any such objection at any point of time. Under those circumstances, the Tribunal ought not to have referred to the issuance of charges to be framed by the Enquiry Officer and thus he submits that the order is liable to be set aside.

4. On the other hand, the learned counsel for the respondents, however, submits that the Tribunal not only considered the competency of the Enquiry Officer to frame the charges, but also went into the merits of the case and dis-approved the action taken by the authorities. Hence, he submits that no ground is made to interfere with the same.

5. We have heard both the counsel.

6 . Before the Tribunal, the order of dismissal was challenged, but however, the Tribunal has observed that the charge sheet ought not to have been issued by the Enquiry Officer, set aside the order and directed reinstatement of the applicant giving liberty to the Department to proceed further in accordance with the Rules. The Tribunal observed at pages 15 and 16 as follows:

"The argument of the learned G.P. that in case where the admission is made, no further enquiry is required cannot be accepted, in view of the fact that even assuming that such is the position, the charges ought to have been framed by the competent authority and then only the question of further proceedings based on such admission arises. It is also observed that in spite of repeated representations by the applicant the records called for were not made available to him. When the applicant specifically stated the numbers of the lorries etc., and requested for supply of trip sheets of these lorries, even assuming that they are not available in the Revenue Department as they are not maintained by them the Collector of the Joint Collector ought to have summoned the same from the Regional Transport Authorities; and made them available. This was not done. Similarly the applicant made a request for examining the witnesses. The applicant submitted the circumstances under which he was unable to attend the enquiry. The very fact that the applicant

was said to have been illegally confined ought to have prompted the Collector to allow the applicant to engage counsel on his behalf. This was also not done. In view of these factors it is to be necessarily held that right from the beginning the impugned proceedings of the Collector were totally vitiated rendering the entire proceedings void as they are in total contravention of the rules 20 and 21 of A.P.C.S. (C.C. & A). In view of my above findings, I hold that the impugned orders are liable to be set aside and accordingly they are set aside. It is further directed that the applicant should be reinstated to duty forthwith. The orders of recovery issued in impugned proceedings are also set aside.

The above orders do not preclude the authorities from proceeding against the applicant if they so choose to do strictly in accordance with A.P.C.S. (C.C & A) Rules giving him an opportunity to peruse the records and to examine and cross-examine the witnesses. With the above directions the O.A. is allowed."

7. We have considered the contentions of the learned counsel with reference to the A.P.C.S.(C.C & A) Rules. As can be seen from the Rules, appointment of Enquiry Officer comes into play only after the explanation is filed to the charge sheet and decision is to be taken by the Disciplinary authority to conduct further enquiry. In the instant case, the Enquiry Officer had himself framed the charges which goes contrary to the Rules 20 and 21 of the A.P.C.S.(C.C & A) Rules. Under those circumstances, we do not find any ground to interfere with the order of the Tribunal, but, however, it is contended by the learned Government Pleader that giving direction to the Department to reinstate the petitioner is only misconceived. Admittedly, the employee was under suspension prior to the order of dismissal. Under those circumstances, the Tribunal ought not to have directed reinstatement of the petitioner. We are in agreement with the contention raised by the learned Government Pleader. When further action is sought to be taken in accordance with the Rules, the Tribunal ought to have left the matter to the discretion of the authorities. Moreover, in the instant case, the employee was already under suspension from 1993 and the order of dismissal was set aside on the technical ground that the Enquiry Officer was not competent to frame the charges. Under those circumstances, we are inclined to modify the order relating to reinstatement and we direct that 1st respondent shall be deemed to have continued under suspension pending further disciplinary action as directed by the Tribunal in the impugned order.

8. With the above observation, the writ petition is dismissed.

No costs.

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(G.BIKSHAPATHY,J)

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(P.S.NARAYANA,J)

Date: 23rd November, 2004.

Chvn/Bsb

ASSISTANT REGISTRAR

// TRUE COPY//

SECTION OFFICER

To

1. The Chief Commissioner of Land Administration, Government of Andhra

Pradesh, Hyderabad.

2. The District Collector, Chittoor District, Chittoor.

3. The Enquiry Officer-cum-Revenue Divisional Officer,

Punganur, chittoor District.

4. The Chairman, Andhra Pradesh Administrative Tribunal

Hyderabad.

5. Two CCs to the Government Pleader for Services –II, High Court Buildings,

Hyderabad (OUT).

6. Two CD copies.